



LEGAL ASPECTS OF UKRAINE'S INTEGRATION TO NATO

After the resonant decision of the National Security and Defence Council of Ukraine on drawing a new Strategy of Ukraine's Relations with NATO, numerous comments and assessments were made in Ukraine and abroad dealing, in particular, with a legal analysis of that decision from the point of view of the Constitution of Ukraine.

In particular, critics referred to a "contradiction" with the alleged "non-allied status of Ukraine fixed in the Constitution" and "excess of powers by Ukraine's National Security and Defence Council" without any serious substantiation. In this connection, the legal treatment given in the article by Fedir Venislavskiy and Viktor Kolsnyk "NATO's choice of Ukraine: Politics Again Slights the Law" (published in Zerkalo Nedeli No.21 on June 8, 2002) seems very interesting and well reasoned. The desire of the authors to ensure utmost legitimacy of legal acts passed in this country and legislative support for decisions concerning Ukraine's national interests should only be lauded. At the same time, there is doubt as to the relevance of unambiguous legal treatment in presence of some deficiencies and unregulated areas in Ukraine's legislation.

So, let us dwell upon the two above-mentioned frequently discussed issues, specifically: legislative provision of Ukraine's non-allied status and assessment of the legitimacy of the decisions taken by Ukraine's NSDC.

Today, the national legislation of Ukraine does not contain norms that define neutrality (or non-participation in military alliances) as a means for promoting the security of our state or as a form of its activities within the international system. The widely held, both in Ukraine and abroad, opinion that relevant norms are specified in Ukraine's Basic Law is erroneous. None of the constitutional provisions directly or indirectly mention neutrality or non-aligned status. To make sure of this, one should just attentively reread the document.

The words about the "intention to become in the future a permanently neutral state that does not take part in military alliances", indeed, were present in Part IX of the Declaration of the State Sovereignty of Ukraine passed by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic on July 16, 1990.

What attracts attention is that the Concept of the new Constitution of Ukraine passed by the Verkhovna Rada of the Ukrainian Soviet Socialist Republic Resolution on June 19, 1991, mentioned the need to supplement it with a special Article 23 "Non-participation in military alliances. Permanent neutral and non-nuclear status", to elaborate the relevant provisions of the Declaration of the State Sovereignty of Ukraine.

However, in further legal acts (with the exception of maybe the documents of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic and the clearly obsolete Military Doctrine of Ukraine of 1993) we will not see any mention of Ukraine's non-aligned status. It is absent not only from the effective Constitution but also from the Concept (State Policy Fundamentals) of the National Security of Ukraine. Moreover, Section IV of said Concept lists among the main guidelines of Ukraine's national security policy "accession to existing and formed universal and regional security systems".

The Guidelines of the Foreign Policy of Ukraine approved by the Verkhovna Rada on July 2, 1993, not only do not refer to the Declaration of the State Sovereignty of Ukraine but contain a clear reference to the need for elaboration, in the new environment, i.e., in fact, of a different interpretation of the provisions of the Declaration of the State Sovereignty of Ukraine. The document stresses that "due to the fundamental changes that occurred after the breakup of the USSR and determined the present geopolitical status of Ukraine, the intention to become in the future a permanently neutral state that does not take part in military alliances once declared by it should be adapted to new conditions and cannot be viewed as an obstacle for its full-fledged participation in pan-European security structures".

Moreover, the document speaks about the priority of creating a pan-European security structure on the basis of the existing international institutions, including NATO, and the importance of "direct and full involvement of Ukraine in such a structure, to create necessary external guarantees of its national security".

The comments that the National Security and Defence Council of Ukraine exceeded its constitutional powers, actually assuming the functions of Parliament, seem unreasoned and, in fact, premature.

It seems evident that it is too early to perform a constitutional and legal analysis of the decisions taken by Ukraine's NSDC, since, pursuant to Article 10 of the Law of Ukraine "On the National Security and Defence Council of Ukraine", their validity is to be confirmed by a decree of the President of Ukraine. Only then will it be possible to speak about the legal consequences of decisions taken. Prior to publication of the relevant decree that task seems impractical, given the insufficiency of the available information about specific provisions of the NSDC decision.

Nevertheless, pursuant to Article 3 of the Law of Ukraine "On the National Security and Defence Council of Ukraine", its functions, inter alia, encompass submission of proposals to the President of Ukraine as to the implementation of fundamentals of home and foreign policy in the sphere of national security and defence.

In accordance with said Law, one of the assignments of Ukraine's NSDC lies exactly in drawing up proposals for drafts of regulatory acts and documents on issues of national security and defence.

The meeting of Ukraine's NSDC took a political decision that, in particular, envisages a plan of action by state authorities aimed at implementation of the Strategy of Ukraine's Relations with NATO. They include drawing relevant bills and their submission for Parliamentary consideration.

This does not mean, however, that at the present moment the President cannot raise issues, which will require the support of the legislative branch in the future. However, in fact, one should not make hasty statements prior to publication of the relevant Presidential Decree and consultations with Parliament. It would be nice to see the document in the near future. Delay with its signing and publication only give rise to speculation and disputes, which does not promote consolidation in society and public support for important state decisions.

To be sure, without a clear regulatory and legal substantiation of the course of Euro-Atlantic integration in the new law on foreign policy fundamentals, a new version of the National Security Concept and the Military Doctrine of Ukraine, any talk of the possibility of filing an application for NATO membership would be ungrounded.

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